

§ 32.16

(d) Generally, the Bureau will consider a stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

INTERIM AND REDUCED DEATH PAYMENTS

§ 32.16 Interim payment in general.

(a) Whenever the Bureau determines upon a showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding \$3,000 to the individual entitled to receive a benefit under §§ 32.10 through 32.15 of this part.

(b) The amount of an interim payment under this subpart shall be deducted from the amount of any final benefit paid to such individual.

[57 FR 24913, June 11, 1992, as amended at 62 FR 37715, July 15, 1997]

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment considering for this purpose the hardship which would result from such repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) Payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, Sec. 4-622);

(2) Benefits authorized by section 8191 of title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this part; and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

28 CFR Ch. I (7-1-99 Edition)

(b) No benefit paid under this part shall be subject to execution or attachment.

(c) No benefit is payable under this part:

(1) With respect to the death of a public safety officer if a benefit is paid under this part with respect to the disability of such public safety officer; or

(2) With respect to the disability of a public safety officer if a benefit is payable under this part with respect to the death of such public safety officer.

FILING AND PROCESSING OF CLAIMS

§ 32.19 Persons executing claims.

(a) The Bureau shall determine who is the proper party to execute a claim in accordance with paragraphs (a) (1) through (3) of this section—

(1) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim and—

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative; or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Bureau may accept a claim executed by a person other than one described in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with paragraph (b) (1) and (2) of this section—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by

the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Claimants are encouraged to submit their claims on OJP Form 3650/5 for death benefits, or the disability benefits claim form, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, DC 20531.

(b) Where an individual files OJP Form 3650/5 for death benefits, or the disability benefits claim form, or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by a permanently and totally disabled public safety officer or on behalf of survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and this part shall submit such evidence of eligibility or other material facts as is specified by this part. The Bureau may require at any time additional evidence to be submitted with regard to entitlement, the

right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and this part has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonably specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the petitioner may charge or receive, if any, shall be determined by the Bureau on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact